

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH CITY SCHOOL
DISTRICT.

OAH Case No. 2015070670

ORDER GRANTING JOINT MOTION
TO DISMISS WEST ORANGE
COUNTY CONSORTIUM FOR
SPECIAL EDUCATION

On July 1, 2015, Student filed a due process hearing request with the Office of Administrative Hearings naming the Huntington Beach City School District and the West Orange County Consortium for Special Education as respondents.

On August 4, 2015, Huntington Beach and West Orange County filed a joint motion to dismiss West Orange County as a party. Student has not filed an opposition or other response to the joint motion.

BACKGROUND AND DISCUSSION

Student's complaint contends that both Huntington Beach and West Orange County are responsible for providing her with a free appropriate public education, and are therefore responsible for any alleged failures to provide programming and services to meet her needs. West Orange County is a Special Education Local Plan Area, not a school district. Student asserts that it is nonetheless a proper party because Huntington Beach, her school district, utilized educational forms produced by West Orange County, and allegedly used an occupational therapist employed by West Orange County to provide services .

The respondents contend West Orange County is not a local educational agency that was ever responsible for providing Student with a FAPE, and therefore is not a proper party to this case.

Special education due process hearing procedures extend to the parent or guardian, to the pupil in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

In their motion to dismiss, the respondents contend that West Orange County is not a proper party to this action because Huntington Beach was the only entity responsible for providing Student with a FAPE.

Student has not responded to the motion to dismiss. In her complaint, the only facts Student provides that connect West Orange County to the allegations in her complaint are that Huntington Beach utilized West Orange County forms for different purposes during the course of her education, and that Huntington Beach may have contracted with an occupational therapist employed by West Orange County to provide occupational therapy services to her. Student does not allege that West Orange County personnel participated in her individualized education plan team meetings, were instrumental in developing her educational plan, or were responsible for her education. Student stated no facts to show that West Orange County was responsible for any facet of her education.

Under California law, school districts operate under a “local plan.” A district of sufficient size may create its own local plan. (Ed. Code, § 56195.1, subd. (a).) Otherwise, multiple districts join together to create the “local plan.” (Ed. Code, § 56195.1, subd. (b).) The service area covered by the local plan is known as the special education local plan area. (Ed. Code, § 56195.1, subd. (d).)

West Orange County is a special education local plan area. Huntington Beach is one of the school districts operating within that plan.

Nothing in the Education Code renders a special education local plan area individually responsible to provide a FAPE to, or make education decisions about, a particular pupil. In this case, Huntington Beach, Student’s district of residence, is the responsible local educational agency. Other than the fact that Huntington Beach may have contracted with West Orange County for occupational therapy services, Student does not allege that West Orange County was involved in her education and, specifically, made any particular educational decisions about her. There is no contention that West Orange County had any other statutory responsibility or obligation to do so.¹

If Student’s reasoning were correct that West Orange County is a proper party merely because the statutory scheme creates special education local plan areas for the purpose of making system-wide decisions about special education with the school districts that comprise it, every local plan area would be a proper party for every due process case filed by a student.

¹ If Student wishes to allege specific facts against West Orange County regarding occupational therapy, Student shall need to file an amended complaint that is specific in contending that West Orange County did provide occupational therapy services and was involved in decisions regarding occupational therapy service levels. The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student, however, provides no authority for that contention. Therefore, without more facts indicating that West Orange County either participated in the decision making process for the development of Student's individualized education program or was obligated to provide her with programming and/or services, West Orange County is not a proper party to this case and must be dismissed.

ORDER

The motion to dismiss the West Orange County Consortium for Special Education is granted. The West Orange County Consortium for Special Education is hereby dismissed from the case.

DATE: August 12, 2015

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings